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STATE OF WASHINGTON
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Supreme Court No. 100769-8

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

CHRIS QUINN, AN INDIVIDUAL;
CRAIG LEUTHOLD, AN INDIVIDUAL;
LEWIS AND MARTHA RANDALL,
AS INDIVIDUALS AND THE MARITAL
COMMUNITY COMPRISED THEREOF;
RICK GLENN, AN INDIVIDUAL; NEIL
MULLER, AN INDIVIDUAL; LARRY
AND MARGARET KING, AS
INDIVIDUALS AND THE MARITAL
COMMUNITY COMPRISED THEREOF;
AND KERRY COX, AN INDIVIDUAL,

Respondents,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE, AN
AGENCY OF THE STATE OF
WASHINGTON, AND VIKKI SMITH, IN
HER OFFICIAL CAPACITY AS DIRECTOR
OF THE DEPARTMENT OF REVENUE,

Appellants,

EDMONDS SCHOOL DISTRICT,
TAMARA GRUBB, ADRIENNE
STUART, MARY CURRY, AND
WASHINGTON EDUCATION
ASSOCIATION,

Intervenors.

APRIL CLAYTON, AN INDIVIDUAL; KEVIN BOUCHEY, AN INDIVIDUAL; RENEE BOUCHEY, AN INDIVIDUAL; JOANNA CABLE, AN INDIVIDUAL; ROSELLA MOSBY, AN INDIVIDUAL; BURR MOSBY, AN INDIVIDUAL; CHRISTOPHER SENSKE, AN INDIVIDUAL; CATHERIN SENSKE, AN INDIVIDUAL; MATTHEW SONDEREN, AN INDIVIDUAL; JOHN MCKENNA, AN INDIVIDUAL; WASHINGTON FARM BUREAU; WASHINGTON STATE TREE FRUIT ASSOCIATION; WASHINGTON STATE DAIRY FEDERATION,

Respondents,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE, AN AGENCY OF THE STATE OF WASHINGTON, AND VIKKI SMITH, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF REVENUE,

Appellants,

EDMONDS SCHOOL DISTRICT, TAMARA GRUBB, ADRIENNE STUART, MARY CURRY, AND WASHINGTON EDUCATION ASSOCIATION,

Intervenors.

RESPONSE IN OPPOSITION TO STATE APPELLANTS' OBJECTION TO MOTION FOR LEAVE TO FILE BRIEF OF AMICI THE BUILDING INDUSTRY ASSOCIATION OF WASHINGTON AND THE WASHINGTON RETAIL ASSOCIATION

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I. INTRODUCTION

Appellants objected to the motion of the Building Industry Association of Washington ("BIAW") and Washington Retail Association ("WRA") (collectively, "the Business Associations") for leave to file an amicus brief in this case. Appellants' objection is unfounded.

II. ARGUMENT

Appellants' objection should be rejected by the Court. First, the motion filed by the Business Associations, who combined represent nearly twelve thousand businesses in our state, complies with RAP 10.6. Under that rule, a motion may be granted "if the filing of the brief would assist the appellate court." Under the analogous federal rule, the classic role of the amicus curiae is to assist in a case of general public interest, supplement the efforts of counsel, and draw the court's attention to law that may otherwise escape consideration. *Miller-Wohl Co., Inc. v.*

Commissioner of Labor and Indus., 694 F.2d 203, 204 (9th Cir. 1982); *see also New England Patriots Football Club, Inc., v. University of Colorado*, 592 F.2d 1196, 1198 n. 3 (1st Cir. 1979) (historically, the role of an amicus was "to aid the court in resolving doubtful issues of law"). Because the Business Associations' motion complies with the requirements of RAP 10.6 and its brief would assist the Court in consideration of the potential impacts to the business community should the tax be upheld, the motion should be allowed.

Second, a nearly identical brief was filed without objection by any party, including the Appellants, at the trial court level. The argument and wording identified in Appellants' objection as problematic is thus already part of the record in the lower court in this case. Appellants do not make clear why this language is suddenly objectionable and what meaningful purpose can be served from excluding it at this stage of the proceedings.

Third, contrary to the assertions of Appellants, it is entirely proper to call into question the motive and intent of the

legislature in adopting a bill. *See e.g. Washington Bankers v. State*, 198 Wash.2d 418, 495 P.3d 808 (2021)("In addition to the statutory language, courts also consult legislative history to determine whether an action was motivated by discriminatory purpose in violation of the commerce clause.") Appellants concede as much when they acknowledge that the Business Associations "are free to criticize the state of law." Appellants' Brief at 6, *citing In re Sawyer*, 360 U.S. 622, 631, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959). Yet, Appellants fail to explain how that freedom does not extend to criticizing the motives and intent of a Legislature that is enacting a tax via statute which flies in the face of over 100 years of precedent from this Court.

Finally, Appellants' objection over language directed at the actions of the Legislature and potential impacts to the rule of law established by this Court boils down to a difference of opinion in semantics. While reasonable minds can disagree on word choice in an argument in the heat of advocacy, this should not be the basis to deny the motion of potential amici curiae. By

way of comparison, the Business Associations' brief does not go nearly as far as other amicus briefs in recent years have in heavily criticizing the constitutionality of the fiscal policies of the Legislature and the impacts of its budgeting decisions- some even calling for the imposition of specific contempt sanctions or enforcement remedies by this Court against the lawmaking-branch of government. *See e.g. Amici Curiae Brief of Columbia Legal Services, Equity in Education Coalition, the Children's Alliance, and the Washington Low Income Housing Alliance in McCleary v. State,* Washington State Supreme Court Case No. 84362-7 (2016).[1] That brief, submitted in a prior case in this Court by another potential amicus in this matter, also directed fairly strong language at the Court. It warned of potential dire consequences to students if the Court failed to properly restrain the Legislature via sanctions, pointing out that an inadequate

[1]https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/McCleary%2084362-7%20amicus%20brief%20by%20Columbia%20Legal%20Services%206.8.2016.pdf

remedy "could destroy—not ensure—their constitutionally-guaranteed opportunity to receive a basic education." *Id.* at 19.

In comparison, the brief of Business Associations is restrained in its rhetoric in its critique of the Legislature and concern of potential Court action in this case. Its larger point in describing the detrimental effect of uncertainty in the legal and regulatory environment of a state despite well-settled long-standing principles of law, is an important one that should be considered by the Court in resolving this matter.

III. CONCLUSION

For the foregoing reasons, this Court should grant the Motion for Leave to File Brief of Amici The Building Industry Association of Washington and the Washington Retail Association.

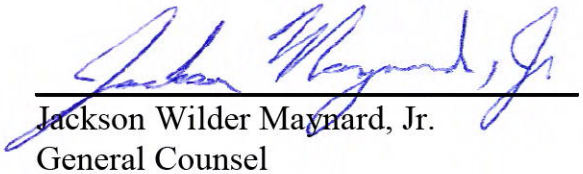
Respectfully submitted this 20th day of December 2022.

This document contains 771 words, excluding the parts of the document exempted from the word count by RAP 18.17.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing **Response in Opposition to Motion for Leave to File Brief of Amici The Building Industry Association of Washington and the Washington Retail Association** to be served on counsel for all other parties in this matter via this Court's e-filing platform.

Dated December 20, 2022.



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